



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9961]

RIN 1545-BO91

Guidance on the Transition From Interbank Offered Rates to Other Reference Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance on the tax consequences of the transition away from the use of certain interbank offered rates in debt instruments, derivative contracts, and other contracts. The final regulations are necessary to address the possibility that a modification of the terms of a contract to replace such an interbank offered rate with a new reference rate could result in the realization of income, deduction, gain, or loss for Federal income tax purposes or could have other tax consequences. The final regulations will affect parties to contracts that reference certain interbank offered rates.

DATES: *Effective date:* These final regulations are effective on **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see §§1.860A-1(b)(7), 1.1001-6(k), and 1.1275-2(m)(5).

FOR FURTHER INFORMATION CONTACT: Spence Hanemann at (202) 317-4554 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR

part 1) under sections 860A, 860G, 1001, 1271, 1275, and 7701(l) of the Internal Revenue Code (Code) and to the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Code.

1. *Discontinuation of LIBOR and Tax Implications*

On July 27, 2017, the Financial Conduct Authority, the United Kingdom regulator tasked with overseeing the London Interbank Offered Rate (LIBOR), announced that publication of all currency and term variants of LIBOR, including U.S.-dollar LIBOR (USD LIBOR), may cease after the end of 2021. The administrator of LIBOR, the ICE Benchmark Administration, announced on March 5, 2021, that publication of overnight, one-month, three-month, six-month, and 12-month USD LIBOR will cease immediately following the LIBOR publication on June 30, 2023, and that publication of all other currency and tenor variants of LIBOR will cease immediately following the LIBOR publication on December 31, 2021.

On September 29, 2021, the Financial Conduct Authority announced that it will compel the ICE Benchmark Administration to continue to publish one-month, three-month, and six-month sterling LIBOR and Japanese yen LIBOR after December 31, 2021, using a “synthetic” methodology that is not based on panel bank contributions (*synthetic GBP LIBORs* and *synthetic JPY LIBORs*, respectively). The Financial Conduct Authority has indicated that it may also require the ICE Benchmark Administration to publish one-month, three-month, and six-month USD LIBOR after June 30, 2023, using a similar synthetic methodology (*synthetic USD LIBORs*). However, these synthetic GBP LIBORs, synthetic JPY LIBORs, and synthetic USD LIBORs are expected to be published for a limited period of time.

Various tax issues may arise when taxpayers modify contracts in anticipation of the discontinuation of LIBOR or another interbank offered rate (IBOR). For example, such a modification may be treated as an exchange of property for other property

differing materially in kind or extent for purposes of §1.1001-1(a), giving rise to gain or loss. Such a modification may also have consequences under the rules for integrated transactions and hedging transactions, withholding under chapter 4 of the Code, fast-pay stock, investment trusts, original issue discount, and real estate mortgage investment conduits (REMICs). To minimize potential market disruption and to facilitate an orderly transition in connection with the discontinuation of LIBOR and other IBORs, the Treasury Department and the IRS published proposed regulations (REG-118784-18) in the **Federal Register** (84 FR 54068) on October 9, 2019 (Proposed Regulations). The Proposed Regulations generally provide that modifying a debt instrument, derivative, or other contract in anticipation of an elimination of an IBOR is not treated as an exchange of property for other property differing materially in kind or extent for purposes of §1.1001-1(a). The Proposed Regulations also adjust other tax rules to minimize the collateral consequences of the transition away from IBORs.

2. Rev. Proc. 2020-44

The Alternative Reference Rates Committee (ARRC), whose ex officio members include the Treasury Department, was convened by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York in 2014. To support the transition away from USD LIBOR, the ARRC has published recommended fallback language for inclusion in the terms of certain cash products, such as syndicated loans and securitizations. The ARRC has also been actively engaged in work led by the International Swaps and Derivatives Association (ISDA) to ensure that the contractual fallback provisions in derivative contracts are sufficiently robust to prevent serious market disruptions when LIBOR is discontinued or becomes unreliable. To that end, ISDA developed the *ISDA 2020 IBOR Fallbacks Protocol* by which the parties to certain derivative contracts can incorporate certain improved fallback provisions into the terms of those contracts.

On October 9, 2020, the Treasury Department and the IRS released Rev. Proc. 2020-44, 2020-45 I.R.B. 991, in advance of finalizing the Proposed Regulations to support the adoption of the ARRC's recommended fallback provisions and the *ISDA 2020 IBOR Fallbacks Protocol*. Rev. Proc. 2020-44 provides that a modification within the scope of the revenue procedure is not treated as an exchange of property for other property differing materially in kind or extent for purposes of §1.1001-1(a). In addition, Rev. Proc. 2020-44 generally provides that a modification within the scope of the revenue procedure will not result in legging out of an integrated transaction or terminating either leg of a hedging transaction.

3. The Final Regulations

The Treasury Department and the IRS received public comments on the Proposed Regulations from eight commenters. Copies of these comments are available for public inspection at <https://www.regulations.gov> or upon request. No public hearing was requested, and none was held. After consideration of the public comments, the Treasury Department and the IRS adopt the Proposed Regulations as amended by this Treasury decision (Final Regulations).

Summary of Comments and Explanation of Revisions

The Final Regulations are intended to provide special rules to help taxpayers adjust to the discontinuation of certain widely used interest rate benchmarks. To achieve this purpose, the Treasury Department and the IRS have concluded that it is appropriate in this context to depart from the ordinary tax rules to the degree and in the manner provided in the Final Regulations. One commenter recommended that the Treasury Department and the IRS supplement the rules in the Final Regulations with “rules of construction” based on the reasonableness of taxpayers’ actions. The Treasury Department and the IRS decline to adopt this comment because such a

principles-based rule would blur the carefully circumscribed degree and manner in which the Final Regulations authorize taxpayers to depart from the ordinary tax rules.

Although the Final Regulations and Proposed Regulations share many of the same fundamental rules, the structure of §1.1001-6 in the Final Regulations differs from that of the Proposed Regulations. These structural changes are primarily intended to simplify the operative rules, which are in §1.1001-6(b) through (g) of the Final Regulations. For example, while the Proposed Regulations separately state the rules for debt and non-debt contracts, the Final Regulations provide a single set of rules for all contracts. The Final Regulations define contract broadly to include not only debt instruments and derivative contracts but also insurance contracts, stock, leases, and other contractual relationships.

The Final Regulations also make use of defined terms, located in §1.1001-6(h), to streamline references to concepts that are frequently used in the operative rules in §1.1001-6(b) through (g). In particular, the defined term “covered modification” is the cornerstone of these rules and serves to restructure several of the fundamental rules set forth in the Proposed Regulations. For example, §1.1001-6 of the Proposed Regulations generally provides certain beneficial tax consequences when the parties to a contract modify the contract to replace an IBOR-based rate with a “qualified rate” and make certain “associated modifications,” which may include a “one-time payment.” The Final Regulations unite these various elements of the Proposed Regulations (that is, modification of a contract, an IBOR-based rate, a qualified rate, associated modifications, and a one-time payment) in the single defined term “covered modification.”

1. Treatment Under Section 1001

Section 1.1001-6(a) of the Proposed Regulations generally provides rules for applying section 1001 to a contract that is modified to replace an IBOR-based rate or

IBOR-based fallback provisions or to add or amend fallback provisions that would replace an IBOR-based rate. Section 1.1001-6(a) of the Proposed Regulations generally provides that such a modification is not treated as an exchange of property under section 1001 and extends this treatment to any reasonably necessary conforming modifications. When modifications that qualify for this special treatment under proposed §1.1001-6(a) occur contemporaneously with modifications that do not qualify, the non-qualifying modifications are subject to the ordinary rules under §1.1001-1(a) or §1.1001-3 and the modifications that qualify for special treatment under proposed §1.1001-6(a) are treated as part of the existing terms of the contract. Section 1.1001-6(b) of the Final Regulations provides similar rules but makes use of the defined terms “covered modification” and “noncovered modification.”

a. Treatment of covered and noncovered modifications

Under §1.1001-6(b)(1) of the Final Regulations, a covered modification of a contract is not treated as an exchange of property for other property differing materially in kind or in extent for purposes of §1.1001-1(a). Consequently, in the case of a debt instrument, a covered modification to which §1.1001-6(b)(1) applies is not treated as a significant modification for purposes of §1.1001-3. As defined in §1.1001-6(h)(1) of the Final Regulations, a covered modification is generally comprised of four elements: (1) a contract with an operative rate or fallback provision that references a discontinued IBOR; (2) a modification of that contract (a) to replace an operative rate that refers to a discontinued IBOR with a qualified rate and, if the parties so choose, to add an obligation for one party to make a qualified one-time payment, (b) to include a qualified rate as a fallback to an operative rate that refers to a discontinued IBOR, or (c) to replace a fallback rate that refers to a discontinued IBOR with a qualified rate; (3) any associated modifications with respect to those modifications of the operative rate or fallback provisions; and (4) satisfaction of rules in §1.1001-6(j) of the Final Regulations

that exclude certain modifications from the definition of covered modification. The defined terms “discontinued IBOR,” “qualified rate,” “qualified one-time payment,” and “associated modification” and the rules in §1.1001-6(j) of the Final Regulations that exclude certain modifications are discussed in more detail in the sections of this preamble entitled *Discontinued IBOR*, *Qualified rate*, *Qualified one-time payments*, *Associated modifications*, and *Fair market value requirement and excluded modifications*, respectively. A modification described in section 4.02 of Rev. Proc. 2020-44, as supplemented by any guidance that may be published in the Internal Revenue Bulletin, is also treated as a covered modification. Rev. Proc. 2020-44 is discussed in more detail in the section of this preamble entitled *Rev. Proc. 2020-44*. For purposes of the definition of a covered modification, the term “modification” is broadly construed to include any modification, regardless of its form. For example, a holding corporation that issued preferred stock may modify that stock for purposes of the Final Regulations by means of an exchange offer conducted by the corporation’s subsidiary. The term also includes any modification regardless of whether the modification is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. For example, any agreement to make additional payments with respect to a contract is a modification of that contract, regardless of whether the parties memorialize the obligation to make those payments in an amendment to the original contract or in a new, standalone contract.

Although §1.1001-6(b)(1) of the Final Regulations generally provides that a covered modification of a contract is not treated as an exchange of property for other property differing materially in kind or in extent for purposes of §1.1001-1(a), whether a noncovered modification that occurs contemporaneously with the covered modification is an exchange of property for other property differing materially in kind or in extent is determined under the ordinary rules in §1.1001-1(a) or §1.1001-3. The Final

Regulations define a noncovered modification as any modification or portion of a modification of a contract that is not a covered modification. Two commenters asked whether pairing a modification that would otherwise qualify for beneficial treatment under the Proposed Regulations with a contemporaneous modification that does not so qualify prevents both modifications from benefitting from the Proposed Regulations. The reference to a “portion of a modification” in the definitions of covered modification and noncovered modification in the Final Regulations indicates that a modification is a noncovered modification only to the extent that it fails to be a covered modification.

Two commenters requested that the Treasury Department and the IRS clarify whether, following a covered modification by which the parties add or amend fallback provisions, the change to the terms of the contract that results from the activation of the new fallback provisions must be tested separately at the time of activation to determine whether that change is an exchange of property for other property differing materially in kind or in extent for purposes of §1.1001-1(a). As is ordinarily the case, a change to the terms of the contract that results from the activation of a fallback provision must be tested at the time of activation to determine whether that change results in such an exchange under §1.1001-1(a). If the change resulting from the activation of a fallback is a covered modification under §1.1001-6(h)(1) of the Final Regulations, then the special rules provided in the Final Regulations for covered modifications apply to that change. Otherwise, whether that change is an exchange of property for other property differing materially in kind or in extent is generally determined under §1.1001-3 for debt instruments and under §1.1001-1(a) for other kinds of contracts.

b. Discontinued IBOR

Section 1.1001-6(h)(4) of the Final Regulations defines “discontinued IBOR,” a term not used in the Proposed Regulations. Sections 1.860G-1(e) and 1.1275-2(m) of the Final Regulations also incorporate this definition. Under this new definition, a

discontinued IBOR is generally an IBOR that will be discontinued, and an IBOR ceases to be a discontinued IBOR a year after the IBOR's discontinuation. The purpose of this new definition is to tailor the relief provided in the Final Regulations to better match the problem that the Final Regulations are intended to address.

One commenter requested that the Final Regulations apply when the parties to a contract modify the terms of the contract after the existing fallback provisions have already replaced all references to the IBOR with another rate. The commenter noted that, in the case of some widely held debt instruments, securing the consent of enough holders to modify the terms of the debt instrument may delay the modification so that the existing fallback provisions are triggered before the modification is complete. In such cases, the Proposed Regulations would not apply to the modification because the qualified rate would not be replacing an IBOR-based rate. The purpose of the Final Regulations is to facilitate the transition away from discontinued IBORs in order to avoid the market disruption that may occur if parties to contracts referencing discontinued IBORs fail to transition before the discontinued IBOR ceases. The change suggested by the commenter is not necessary to achieve this purpose. Moreover, the discontinuation of the most commonly used tenors of USD LIBOR has been deferred until June 30, 2023, giving parties to contracts such as those described by the commenter an additional 18 months to act. Accordingly, the Final Regulations do not adopt this comment.

As discussed in the section of this preamble entitled *Discontinuation of LIBOR and Tax Implications*, the ICE Benchmark Administration will continue to publish synthetic GBP LIBORs and synthetic JPY LIBORs for a limited time after December 31, 2021, and may publish synthetic USD LIBORs for a limited time after June 30, 2023. The Treasury Department and the IRS have determined that, for purposes of the Final Regulations, these synthetic LIBORs are a continuation of the currency and tenor

variant of LIBOR that they succeed. Thus, for example, three-month sterling LIBOR became a discontinued IBOR on March 5, 2021, the date on which the ICE Benchmark Administration announced that it would permanently cease to publish three-month sterling LIBOR, and will cease to be a discontinued IBOR one year after the date on which the ICE Benchmark Administration ceases to publish the three-month tenor of synthetic GBP LIBOR.

c. Qualified rate

The definition of “qualified rate” in §1.1001-6(b) of the Proposed Regulations generally includes three elements: (1) the putative qualified rate must appear on a list of rates eligible to be a qualified rate in §1.1001-6(b)(1); (2) the fair market values of the contract before and after the modification involving the putative qualified rate must be substantially equivalent under §1.1001-6(b)(2); and (3) the interest rate benchmark to which the putative qualified rate refers and the relevant IBOR generally must be based on the same currency under §1.1001-6(b)(3). The fair market value requirement is addressed in more detail in the section of this preamble entitled *Fair market value requirement and excluded modifications*.

One commenter recommended streamlining the list of rates that are eligible to be a “qualified rate” in §1.1001-6(b)(1) of the Proposed Regulations. The commenter pointed out that §1.1001-6(b)(1)(x) of the Proposed Regulations generally includes qualified floating rates without regard to the limitations on multiples and that the interest rate benchmarks listed in §1.1001-6(b)(1)(i) through (viii) of the Proposed Regulations are merely examples of qualified floating rates. In response, the Treasury Department and the IRS have merged §1.1001-6(b)(1)(i) through (viii) and (x) of the Proposed Regulations into a single entry in §1.1001-6(h)(3)(ii)(A) of the Final Regulations, which includes a non-exclusive list of rates that are generally qualified floating rates, such as the Secured Overnight Financing Rate published by the Federal Reserve Bank of New

York (SOFR), the Sterling Overnight Index Average, the Tokyo Overnight Average Rate, the Swiss Average Rate Overnight, and the euro short-term rate administered by the European Central Bank.

This commenter also suggested that §1.1001-6(b)(1)(xi) of the Proposed Regulations, which describes any rate determined by reference to another rate included in the list of eligible rates, is unnecessary because any rate described in that paragraph is also described in §1.1001-6(b)(1)(x) of the Proposed Regulations, which is any qualified floating rate without regard to the limitations on multiples. However, certain IBOR-based objective rates (as defined in §1.1275-5(c)) and certain IBOR-based rates on contingent payment debt instruments (within the meaning of §1.1275-4) may not be described in §1.1001-6(b)(1)(x) of the Proposed Regulations. Accordingly, the Final Regulations do not adopt this comment and retain both §1.1001-6(b)(1)(x) and (xi) of the Proposed Regulations in the list of eligible rates at §1.1001-6(h)(3)(ii)(A) and (D) of the Final Regulations, respectively.

Other commenters suggested that the list of rates that are eligible to be qualified rates in the Proposed Regulations be expanded to include any rate identified by the ARRC or ISDA as a replacement for an IBOR. The Treasury Department and the IRS have concluded that allowing any purely private organizations the authority to add to the list of rates eligible to be qualified rates would be inconsistent with the carefully circumscribed degree and manner in which the Final Regulations authorize taxpayers to depart from the ordinary tax rules. Accordingly, the Final Regulations extend such authority only to the ARRC and only for as long as the Federal Reserve Bank of New York continues to be an ex officio member of the ARRC.

One commenter recommended that the currency element of the definition of qualified rate in §1.1001-6(b)(3) of the Proposed Regulations be removed. After stating that a qualified rate under the Proposed Regulations must generally be a qualified

floating rate, the commenter reasoned that the currency requirement in the definition of qualified rate is unnecessary because that requirement is already built into the definition of qualified floating rate under §1.1275-5(b). The Final Regulations do not adopt this comment because a qualified rate under the Final Regulations is not required to be a qualified floating rate. For example, an objective rate based on a qualified floating rate may be described in §1.1001-6(h)(3)(ii)(D) of the Final Regulations but not in §1.1001-6(h)(3)(ii)(A) of the Final Regulations. Also, although the currency requirements in §1.1001-6(h)(3)(i) of the Final Regulations and §1.1275-5(b) may overlap in many cases, these requirements are not identical. The currency requirement for qualified rates in the Final Regulations requires that the discontinued IBOR and the interest rate benchmark included in the qualified rate be based on the same currency, whereas the currency requirement for qualified floating rates in §1.1275-5(b) requires that the currency on which the qualified floating rate is based match the currency in which the debt instrument is denominated.

The definition of qualified rate has also been amended in the Final Regulations in response to public comments that identify gaps in how the definition of qualified rate in the Proposed Regulations applies to covered modifications that involve the addition or amendment of fallback provisions. In particular, commenters asked how the definition of qualified rate applies when a contract is modified to include a waterfall of fallback rates, the individual tiers of which may not independently satisfy the definition of qualified rate. Commenters also asked how the definition of qualified rate applies to a fallback rate that will be determined on the date that the fallback rate is triggered and cannot be determined on the date of the modification by which that fallback rate is added to the contract.

The Final Regulations address these comments by providing a series of rules in §1.1001-6(h)(3)(i) and (iii) for determining whether a fallback rate or a collection of

fallback rates meet the definition of a qualified rate. Section 1.1001-6(h)(3)(i) of the Final Regulations provides that a single qualified rate may be comprised of more than one fallback rate, such as when the parties add a fallback waterfall. In other words, this rule treats a waterfall of fallbacks as a unit and evaluates that unit to determine if it is a qualified rate. Thus, if the waterfall is designed so that each tier replaces the preceding tier when triggered (for example, when USD LIBOR ceases, USD LIBOR is replaced by the first tier of the waterfall and, if the first tier of the waterfall ceases, that first tier is replaced by the second tier), the entire waterfall is treated as a fallback to a discontinued IBOR even though, as a technical matter, only the first tier of the waterfall is a fallback to the discontinued IBOR. Section 1.1001-6(h)(3)(iii)(A) of the Final Regulations generally provides that, when a collection of fallback rates is added to the contract (for example, a fallback waterfall), that collection of fallback rates is a qualified rate only if each individual fallback rate in the collection meets the requirements to be a qualified rate. Sections 1.1001-6(h)(3)(iii)(B) and (C) of the Final Regulations apply for purposes of determining whether an individual fallback rate (regardless of whether that fallback rate was added to the contract individually or the fallback rate was added as a collection of fallback rates and is being tested individually under §1.1001-6(h)(3)(iii)(A) of the Final Regulations) meets the requirements to be a qualified rate. Under §1.1001-6(h)(3)(iii)(B) of the Final Regulations, a fallback rate is treated as not meeting the requirements to be a qualified rate if the contractual terms that comprise the fallback rate do not ensure at the time of the modification that the fallback rate will meet the requirements to be a qualified rate identified in the first sentence of §1.1001-6(h)(3)(i) of the Final Regulations when the fallback rate is triggered. Under §1.1001-6(h)(3)(iii)(C) of the Final Regulations, a fallback rate is treated as meeting the requirements to be a qualified rate if the likelihood that it will ever be triggered is remote. If §1.1001-6(h)(3)(iii)(B) and (C) of the Final Regulations both apply to a given fallback rate, the

rule in §1.1001-6(h)(3)(iii)(C) takes priority over the rule in §1.1001-6(h)(3)(iii)(B).

Examples in §1.1001-6(h)(3)(iv) of the Final Regulations illustrate the operation of these rules for fallback rates.

d. *Associated modifications*

The Proposed Regulations generally define an associated modification as a modification that is both associated with the replacement of an IBOR-based rate or the inclusion of fallbacks to an IBOR-based rate and that is reasonably necessary to adopt or to implement that replacement or inclusion. Section 1.1001-6(h)(5) of the Final Regulations generally defines an associated modification similarly but eliminates the requirement that an associated modification be “associated with” such a replacement or inclusion because any modification that is reasonably necessary to adopt or to implement the replacement or inclusion is necessarily associated with that replacement or inclusion.

The definition of “associated modification” in the Proposed Regulations also includes a “one-time payment,” which is generally defined as a payment to offset the change in value of the contract that results from replacing an IBOR-based rate with a qualified rate. One commenter asked whether certain cash payments can qualify as associated modifications even if they do not qualify as one-time payments. For example, if the parties to an interest rate swap agree to replace USD LIBOR with a replacement rate comprised of a compounded average of SOFR (computed in arrears using a two-day observation period shift without payment lag) and a fixed adjustment spread, one party might also agree to make an incidental cash payment to compensate the counterparty for small valuation differences between the pre-modification LIBOR-based contract and the post-modification SOFR-based contract, such as the valuation differences resulting from the difference in observation period. The Treasury Department and the IRS have concluded that including such limited payments within the

definition of an associated modification would further the policy goal of the Final Regulations to facilitate the transition away from discontinued IBORs. Accordingly, the definition of “associated modification” in §1.1001-6(h)(5) of the Final Regulations includes an incidental cash payment intended to compensate a counterparty for small valuation differences resulting from a modification of the administrative terms of a contract, such as the valuation differences resulting from a change in observation period. The Treasury Department and the IRS caution, however, that a payment of an amount that is not incidental cannot qualify as an associated modification.

e. Qualified one-time payments

The Proposed Regulations provide that a “one-time payment,” generally defined as a payment to offset the change in value of the contract that results from replacing an IBOR-based rate with a qualified rate, may be an associated modification. To improve readability and clarity, the Final Regulations redesignate “one-time payments” as “qualified one-time payments” and define the new term in a standalone definition rather than as a kind of associated modification.

Commenters asked whether the Proposed Regulations cap the amount of a one-time payment and described certain abuses that may result if the amount of the payment is not limited in some way. To clarify the intent of the Proposed Regulations and to prevent excessive payments from satisfying the definition of qualified one-time payments, the Final Regulations generally limit a qualified one-time payment to the amount intended to compensate for the basis difference between the discontinued IBOR and the interest rate benchmark to which the qualified rate refers. Any portion in excess of that cap is a noncovered modification.

f. Fair market value requirement and excluded modifications

The Proposed Regulations generally require that the fair market value of the modified contract be substantially equivalent before and after the modification. The

Proposed Regulations provide two safe harbors to the fair market value requirement: the historical average safe harbor and the arm's length safe harbor. Under the historical average safe harbor, the fair market value requirement is generally satisfied if, on the date of the modification, the historical average of the IBOR-based rate is within 25 basis points of the historical average of the putative qualified rate. To qualify for the arm's length safe harbor, the parties to the contract generally must not be related under §267(b) or §707(b)(1), must conduct bona fide, arm's length negotiations, and must determine based on those negotiations that the fair market value requirement is satisfied. The Treasury Department and the IRS received many public comments identifying practical problems and technical issues with the fair market value requirement and its two safe harbors. In response to these public comments, the Treasury Department and the IRS have replaced the fair market value requirement with rules that describe specific modifications (the excluded modifications) and exclude those modifications from the definition of covered modification. These excluded modifications are described in §1.1001-6(j)(1) through (5) of the Final Regulations.

One significant purpose of the fair market value requirement in the Proposed Regulations is to ensure that the modifications to the cash flows of an IBOR-referencing contract are intended to address the replacement of the IBOR-based rate in the contract. Because the excluded modifications replace the fair market value requirement, each of the excluded modifications described in §1.1001-6(j)(1) through (5) of the Final Regulations involves modifying the contract in a way that changes the amount or timing of contractual cash flows.

In addition to a change in cash flows, each of the excluded modifications also describes a particular purpose or intent of the parties making the modification. Section 1.1001-6(j)(1) of the Final Regulations generally describes a situation in which the parties to a contract change the contractual cash flows to induce one or more of the

parties to perform any act necessary to consent to a covered modification of the contract. Example 3 in §1.1001-6(j)(6)(iii) illustrates the operation of §1.1001-6(j)(1). Section 1.1001-6(j)(2) of the Final Regulations generally describes a situation in which the parties to a contract agree to a contemporaneous noncovered modification of that contract that does not necessarily change contractual cash flows and, in consideration for that change, also agree to change contractual cash flows. Example 5 in §1.1001-6(j)(6)(v) illustrates the operation of §1.1001-6(j)(2). Section 1.1001-6(j)(3) of the Final Regulations generally describes a situation in which one party to a contract is experiencing financial distress and another party either makes a concession to or secures a concession from the distressed party in the form of a change in contractual cash flows. Example 6 in §1.1001-6(j)(6)(vi) illustrates the operation of §1.1001-6(j)(3). Section 1.1001-6(j)(4) of the Final Regulations generally describes a situation in which the parties to a contract agree to change contractual cash flows on that contract as consideration for some extra-contractual arrangement. Example 7 in §1.1001-6(j)(6)(vii) illustrates the operation of §1.1001-6(j)(4). Section 1.1001-6(j)(4) of the Final Regulations also includes a special rule that applies when the parties make an aggregate qualified one-time payment on a portfolio of modified contracts. In that case, the portion of the qualified one-time payment allocable to any one contract in the portfolio is treated as not intended to compensate for any changes in rights or obligations under any other contract in the portfolio.

In §1.1001-6(j)(5) of the Final Regulations, the Treasury Department and the IRS reserve the authority to expand this list of excluded modifications in guidance published in the Internal Revenue Bulletin. To exercise this authority, the Treasury Department and the IRS must conclude that the modification to be described in such guidance has a principal purpose of achieving a result that is unreasonable in light of the purpose of §1.1001-6. The Treasury Department and the IRS have concluded that this reservation

of authority is necessary to prevent any unforeseen abuses of the significant flexibility granted to taxpayers in the Final Regulations. However, the Treasury Department and the IRS anticipate that any such guidance would be prospective in effect.

g. Rev. Proc. 2020-44

In Rev. Proc. 2020-44, the Treasury Department and the IRS provided rules that overlap with certain of the rules in the Final Regulations. Like §1.1001-6(b)(1) of the Final Regulations, section 5.01 of Rev. Proc. 2020-44 provides that a modification within the scope of the revenue procedure is not treated as an exchange of property for other property differing materially in kind or extent for purposes of §1.1001-1(a). And like §1.1001-6(c)(1)(iii) and (c)(2) of the Final Regulations, section 5.02 of Rev. Proc. 2020-44 generally provides that a modification within the scope of the revenue procedure will not result in legging out of an integrated transaction or terminating either leg of a hedging transaction. Section 4.02 of Rev. Proc. 2020-44 generally limits the scope of the revenue procedure to modifications to a contract to incorporate certain fallback provisions published by the ARRC or ISDA, labeled the “ARRC Fallbacks” and the “ISDA Fallbacks” by the revenue procedure. The parties modifying a contract under Rev. Proc. 2020-44 may also deviate in certain limited ways from the ARRC and ISDA Fallbacks. The Treasury Department and the IRS noted that the scope of the revenue procedure may be expanded in subsequent guidance published in the Internal Revenue Bulletin to address developments in the transition away from IBORs. The revenue procedure applies to modifications that occur on or after October 9, 2020, and before January 1, 2023, although the parties to a contract may rely on the revenue procedure for modifications that occur before October 9, 2020.

In the definition of covered modification in §1.1001-6(h)(1), the Final Regulations generally provide that a modification described in section 4.02 of Rev. Proc. 2020-44 is treated as a covered modification. A modification described in section 4.02 of Rev.

Proc. 2020-44 is treated as a covered modification even if the revenue procedure does not apply to that modification, for example, because the modification occurs after the revenue procedure's sunset date of December 31, 2022. The effect of this provision is that the rules in §§1.1001-6(b) through (g) and 1.860G-1(e), which rely on the definition of covered modification in §1.1001-6(h)(1), apply to modifications described in section 4.02 of Rev. Proc. 2020-44. Because of the substantive overlap between the rules in §1.1001-6(b) and (c) of the Final Regulations and the rules in section 5 of Rev. Proc. 2020-44, it is possible for a single modification to be subject to both sets of rules. As a practical matter, however, the rules in §1.1001-6(b) and (c) of the Final Regulations are consistent with the rules in section 5 of Rev. Proc. 2020-44, so no conflict is expected to arise.

Prior to the release of Rev. Proc. 2020-44, several commenters recommended that the Final Regulations accommodate the fallback provisions published by the ARRC and ISDA. For example, one commenter recommended that the Final Regulations provide that a modification to incorporate the ARRC's or ISDA's fallback provisions or fallback provisions substantially similar to the ARRC's or ISDA's fallback provisions is not an exchange of property under section 1001. Rev. Proc. 2020-44 and its incorporation into the definition of covered modification in the Final Regulations address these comments.

2. Integrated Transactions and Hedging Transactions

Section 1.1001-6(c) of the Proposed Regulations generally provides that the modification of a contract to replace an IBOR-based rate with a qualified rate is not treated as legging out of a transaction integrated under §1.1275-6, §1.988-5(a), or §1.148-4(h), provided that the components of the transaction continue to qualify for integration after the modification. That section also generally provides that the modification of a contract to replace an IBOR-based rate with a qualified rate is not

treated as a disposition or termination of either leg of a hedging transaction under §1.446-4(e)(6). One commenter stated that, because §1.446-4 refers to §1.1221-2(b) for the definition of “hedging transaction” and because a hedging transaction and the hedged item must be identified as provided in §1.1221-2(f), the inclusion in the Proposed Regulations of a rule for §1.446-4 may justify a negative inference that a similar rule is required to avoid reidentification under §1.1221-2(f). The Treasury Department and the IRS have concluded that §1.1001-6(b)(1) of the Final Regulations, which provides that a covered modification of either a hedging transaction or the hedged item is not treated as an exchange of property for other property differing materially in kind or in extent for purposes of §1.1001-1(a), is sufficient to ensure that neither the hedging transaction nor the hedged item, as modified by the covered modification, needs to be reidentified under §1.1221-2(f).

The same commenter noted that §1.1001-6(c) of the Proposed Regulations does not include modifications to add or amend fallback provisions and recommended that the Final Regulations clarify whether the rules in that section apply to such modifications. The commenter further stated that, if a debt instrument and a hedge that reference the same ceasing IBOR are integrated under §1.1275-6 and the parties’ covered modifications of the two instruments result in the fallback provisions being slightly mismatched either in timing (that is, the fallbacks have slightly different triggers) or amount (that is, the fallback rates are slightly different), that mismatch of the fallback provisions could cause a leg out of the integrated transaction even before either fallback provision is triggered. The commenter recommended that such mismatched fallback provisions not cause a leg out of an integrated transaction under §1.1275-6, §1.988-5(a), or §1.148-4(h). In response to these comments, §1.1001-6(c) of the Final Regulations applies to a covered modification, which is generally defined to include the addition or amendment of fallback provisions. Also, §1.1001-6(c)(2) of the Final

Regulations generally provides that a covered modification that adds or amends fallback provisions is treated as not logging out of a transaction integrated under §1.1275-6, §1.988-5(a), or §1.148-4(h). The Treasury Department and the IRS caution, however, that any mismatch in the fallback provisions of the components of a transaction integrated under §1.1275-6, §1.988-5(a), or §1.148-4(h) may result in logging out when one or more of those fallback provisions are triggered. In that case, a taxpayer would first determine whether the rules in §1.1001-6(c)(1) of the Final Regulations apply to any modification that results from the triggered fallback provisions.

Several commenters raised questions about the Proposed Regulations' requirement that, to avoid logging out under §1.1275-6, §1.988-5(a), or §1.148-4(h), the integrated hedge must continue to qualify as a §1.1275-6 hedge, a §1.988-5(a) hedge, or a qualified hedge, respectively, after the modification. Two commenters asserted that certain minor mismatches between the modified terms of the components will inevitably arise (either because of minor differences in the modified terms or because the components are not modified at the same time) and that such mismatches may prevent the modified contracts from qualifying for continued integration under §1.1001-6(c) of the Proposed Regulations. These commenters recommended that, if under the Final Regulations a modification is not treated as an exchange of property for purposes of section 1001, that modification also not be treated as logging out of an integrated transaction under §1.1275-6 or §1.988-5(a), regardless of whether the modified contracts would otherwise continue to qualify for integration. Alternatively, these commenters recommended that the Final Regulations provide a grace period during which the modified components of the integrated transaction do not have to meet the qualifications for integration. The Final Regulations adopt these commenters' alternative recommendation. Sections 1.1001-6(c)(1)(i), (ii), and (iv) of the Final Regulations provide a grace period during which a covered modification of a component

of a transaction integrated under §1.1275-6, §1.988-5(a), or §1.148-4(h) does not result in legging out of that integrated transaction, notwithstanding any mismatch in timing or amount of payments that results from the covered modification during the grace period. The grace period lasts 90 days and starts on the date of the first covered modification of any component of the integrated transaction. If, however, the hedge component of the integrated transaction does not qualify as a §1.1275-6 hedge, a §1.988-5(a) hedge, or a qualified hedge under §1.148-4(h), as appropriate, by the end of the grace period, the covered modification is a legging out as of the date of the covered modification.

These commenters also observed that taxpayers may enter into temporary hedges, such as basis swaps, to manage the economic risk posed by temporary mismatches between the terms of the components of a transaction integrated under §1.1275-6 or §1.988-5(a). The commenters recommended that the Final Regulations accommodate the temporary integration of these hedges. The Final Regulations adopt this comment and provide that temporary hedges entered into to mitigate the economic effect of such temporary mismatches may be integrated during the 90-day grace period without disruption to a transaction integrated under §1.1275-6 or §1.988-5(a).

One commenter offered several comments that are specific to the rules in the Proposed Regulations on integration of tax-advantaged bonds under §1.148-4(h). This commenter recommended that the Final Regulations clarify that the rules in §1.1001-6(c) for integration of tax-advantaged bonds apply to a qualified hedge that is super-integrated under §1.148-4(h)(4). Section 1.148-4(h)(4) generally permits only negligible mismatches in timing and amount of payments on super-integrated hedges and bonds, and super-integration of taxable-index hedges, such as hedges based on IBORs, is even more strictly limited. Accordingly, the Treasury Department and the IRS do not adopt this comment, and the Final Regulations clarify that §1.1001-6(c)(1)(iv) does not apply to hedges and bonds integrated under §1.148-4(h)(4).

This commenter also requested that the Final Regulations provide that a one-time payment does not cause a hedge to fail to meet the requirements for qualification under §1.148-4(h)(3)(iv)(C), as required by §1.1001-6(c) of the Proposed Regulations. The nonperiodic nature of a one-time payment could prevent qualification under several of the requirements identified in §1.148-4(h)(3)(iv)(C), such as the requirement that the contract contain no significant investment element and the requirement that the payments on the hedge correspond closely in time to the payments on the hedged bonds. The Treasury Department and the IRS have determined that, in each case, the obstacle to qualification can be eliminated by treating the qualified one-time payment as a series of periodic payments spread over time. Accordingly, §1.1001-6(c)(1)(iv) of the Final Regulations provides that, solely for purposes of applying the qualification requirements identified in §1.148-4(h)(3)(iv)(C), a qualified one-time payment on the hedge or the hedged bonds is allocated in a manner consistent with the way in which a termination payment on a variable yield issue is allocated under §1.148-4(h)(3)(iv)(H) and the qualification requirements under §1.148-4(h)(3)(iv)(C) are applied as if the qualified one-time payment were a series of periodic payments.

3. Fast-Pay Stock

Section 1.7701(l)-3 provides rules that prevent the avoidance of tax by persons participating in fast-pay arrangements. A fast-pay arrangement is defined in §1.7701(l)-3(b)(1) as any arrangement in which a corporation has fast-pay stock outstanding for any part of its taxable year. Fast-pay stock is defined in §1.7701(l)-3(b)(2)(i) as stock structured so that dividends (as defined in section 316) paid by the corporation with respect to the stock are economically (in whole or in part) a return of the holder's investment (as opposed to only a return on the holder's investment). Section 1.7701(l)-3(b)(2)(ii) provides that the determination of whether stock is fast-pay stock is based on all facts and circumstances. Stock is examined when it is issued to determine if it is

fast-pay stock and, “for stock that is not fast-pay stock when issued, when there is a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances.” *Id.*

One commenter stated that, in certain circumstances, a covered modification of preferred stock could cause the stock to satisfy the definition of fast-pay stock despite the fact that the parties modified the stock not for the purpose of avoiding tax, but rather for the purpose of addressing the discontinuation of an IBOR. Because stock is re-examined to determine if it is fast-pay stock upon the occurrence of either “a significant modification in the terms of the stock or the related agreements” or “a significant change in the relevant facts and circumstances,” the commenter recommended that the Final Regulations provide that a covered modification is neither a significant modification nor a significant change for this purpose.

The Treasury Department and the IRS have determined that such a rule would further the purpose of the Final Regulations to facilitate the transition away from IBORs that will be discontinued. In addition, the scope and operation of the recommended rule are generally consistent with the scope and operation of the rules in §§1.1001-6(b)(1) and (d) of the Final Regulations (treatment of covered modifications under section 1001 and under chapter 4, respectively). Accordingly, the Final Regulations adopt this comment and provide in §1.1001-6(e) that a covered modification of stock is not a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances for purposes of §1.7701(l)-3(b)(2)(ii). Unlike §§1.1001-6(b)(1) and (d) of the Final Regulations, however, §1.1001-6(e) of the Final Regulations further provides that, if a covered modification and a noncovered modification are made at the same time or as part of the same plan and the noncovered modification is a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances, then

§1.7701(l)-3(b)(2)(ii) applies and all of the facts and circumstances, including the covered modification and the noncovered modification, are considered in determining whether the stock is fast-pay stock.

4. Investment Trusts under §301.7701-4(c)(1)

Under §301.7701-4(c)(1), an investment trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. One commenter recommended that a covered modification of the income-apportioning terms of an ownership interest be treated as not manifesting a power to vary the investment of certificate holders in a trust under §301.7701-4(c)(1). The Final Regulations adopt this comment, providing in §1.1001-6(f) that neither a covered modification of a contract held by an investment trust nor a covered modification of an ownership interest in the investment trust manifest a power to vary the investment of the certificate holder for this purpose.

5. Rules Regarding Qualified One-Time Payments

The Proposed Regulations generally provide in §1.1001-6(d) that the character and source of a one-time payment made by a given payor is the same as the source and character of a payment under the contract by that payor. For example, a one-time payment by a lessee on a lease is characterized as a payment of rent and sourced accordingly. The Treasury Department and the IRS received several comments requesting clarification on how this rule applies to certain financial contracts. Several commenters also requested clarification on the timing of tax items associated with a one-time payment. One commenter requested guidance on how a one-time payment is treated for purposes of the arbitrage investment restrictions and private use restrictions that apply to tax-advantaged bonds. The Treasury Department and the IRS are still considering how best to address these issues relating to qualified one-time payments. Until the Treasury Department and the IRS publish further guidance, taxpayers may

continue to rely on the rule in §1.1001-6(d) of the Proposed Regulations to determine source and character of a qualified one-time payment under the Final Regulations.

6. REMICs

Section 1.860G-1(e) of the Proposed Regulations provides special rules applicable to REMICs that have issued interests with an IBOR-based rate or that hold obligations with an IBOR-based rate. Section 1.860G-1(e)(4) of the Proposed Regulations provides certain rules addressing the treatment of reasonable costs incurred to effect a modification that qualifies for special treatment under §1.1001-6(a)(1), (2), or (3) of the Proposed Regulations. One commenter noted that the governing documents for a REMIC may require tax opinions and rating agency confirmations in connection with the modifications contemplated in the Proposed Regulations and recommended that the Treasury Department and the IRS confirm that the costs of obtaining these materials are “reasonable costs” within the meaning of §1.860G-1(e)(4) of the Proposed Regulations. Whether a cost is reasonable depends upon the facts and circumstances relating both to the nature of the cost and the amount of the cost. However, the Treasury Department and the IRS generally agree that the costs of obtaining tax opinions and rating agency confirmations required by the governing documents for a REMIC are reasonable in nature.

7. *Interest Expense of a Foreign Corporation*

The Proposed Regulations provide in §1.882-5(d)(5)(ii)(B) that a foreign corporation that is a bank may elect to compute interest expense attributable to excess U.S.-connected liabilities using a yearly average of SOFR. One commenter stated that a yearly average of SOFR is not an equitable substitute for 30-day USD LIBOR, the rate that foreign banks are permitted to elect for this purpose under the existing regulations, because 30-day USD LIBOR is typically a higher rate than a yearly average of SOFR. This commenter recommended that, in lieu of SOFR, the Final Regulations either refer

to a widely accepted interest rate benchmark that is more similar than SOFR to 30-day USD LIBOR or add a fixed adjustment spread to the yearly average of SOFR.

The Treasury Department and the IRS continue to study the appropriate rate to replace 30-day USD LIBOR for purposes of the published rate election under §1.882-5(d)(5)(ii)(B). In evaluating the appropriate replacement rate, the Treasury Department and the IRS will continue to balance the administrative convenience of providing taxpayers an election to use the annual published rate with the need for a replacement rate that more accurately reflects the taxpayer's borrowing costs. In providing taxpayers with an election to use a published rate, the Treasury Department and the IRS must ensure that the replacement rate does not overstate the amount of interest expense allocable to income that is effectively connected with the conduct of a U.S. trade or business. Until final regulations are published that replace the 30-day USD LIBOR election provided in §1.882-5(d)(5)(ii)(B), taxpayers may continue to apply either the general rule or the annual published rate election provided under §1.882-5(d)(5)(ii) to calculate interest on excess U.S.-connected liabilities. Taxpayers may also continue to rely on the rule in §1.882-5(d)(5)(ii)(B) of the Proposed Regulations and compute interest on excess U.S.-connected liabilities by computing a yearly average SOFR based on the rates published by the Federal Bank of New York for the taxable year. Although commenters provided some ideas on a rate that could be closer to a replacement for 30-day LIBOR (for example, a widely accepted interest rate benchmark or adding a fixed adjustment spread to the yearly average of SOFR), the Treasury Department and the IRS continue to request recommendations for a specific rate that would be an appropriate replacement to 30-day LIBOR for computing interest expense on excess U.S.-connected liabilities for purposes of §1.882-5(d)(5)(ii)(B). The Treasury Department and the IRS anticipate issuing additional guidance addressing §1.882-5(d)(5)(ii)(B) before 30-day USD LIBOR is discontinued in 2023.

8. Change of Accounting Method

One commenter asked the Treasury Department and the IRS to address whether changing from an IBOR-based discount rate to a discount rate based on a different interest rate benchmark for the purpose of valuing securities under the mark-to-market rules in section 475 is a change in method of accounting that requires the consent of the Secretary under section 446(e). The commenter noted that this change may occur either at the time when the relevant IBOR is discontinued or in advance of that time in anticipation of the IBOR's discontinuation. To facilitate an orderly transition in connection with the discontinuation of IBORs and to treat changes from an IBOR-based discount rate in a consistent manner, the Treasury Department and the IRS will not treat a change from a discount rate that is based on a discontinued IBOR (as defined in §1.1001-6(h)(4) of the Final Regulations) to a discount rate that is a qualified rate for the purpose of valuing securities under the mark-to-market rules in section 475 as a change in method of accounting under section 446(e).

9. Applicability Dates

The Proposed Regulations under §§1.860G-1(e), 1.1001-6, and 1.1275-2(m) generally propose that the Final Regulations permit taxpayers to apply the Final Regulations retroactively, as authorized under section 7805(b)(7). However, the Proposed Regulations under §1.1001-6 propose that the Final Regulations require as a condition of a taxpayer's retroactive application that all the taxpayer's related parties also apply §1.1001-6 retroactively. One commenter requested that this requirement be more clearly stated, and the Final Regulations do so in §1.1001-6(k).

Another commenter observed that sections 267(b) and 707(b)(1), under which relatedness is determined for purposes of the applicability dates in the Proposed Regulations, do not effectively address governmental entities or tax-exempt entities described in section 501(c)(3). This commenter recommended that relatedness be

determined for such entities under §1.150-1(b) and (e). The Treasury Department and the IRS agree with this comment and adopt the commenter's recommendation in §§1.1001-6(k) and 1.1275-2(m)(5) of the Final Regulations.

Effect on Other Documents

Rev. Proc. 2020-44, 2020-45 I.R.B. 991, is amplified.

Special Analyses

I. Regulatory Planning and Review--Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental, and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these final regulations as economically significant under section 1(c) of the MOA.

A. Background, Need for the Final Regulations, and Economic Analysis of Final Regulations

A very large volume of U.S. financial products and contracts include terms or conditions that reference LIBOR or, more generally, IBORs. Concern about manipulation and a decline in the volume of the funding from which LIBOR is calculated led to recommendations for the development of alternatives to LIBOR that would be based on transactions in a more robust underlying market. In addition, on July 27,

2017, the U.K. Financial Conduct Authority, the U.K. regulator tasked with overseeing LIBOR, announced that all currency and term variants of LIBOR, including USD LIBOR, may be phased out after 2021 and not be published after that timeframe. The administrator of LIBOR, the ICE Benchmark Administration, announced on March 5, 2021, that publication of overnight, one-month, three-month, six-month, and 12-month USD LIBOR will cease immediately following the LIBOR publication on June 30, 2023, and that publication of all other currency and tenor variants of LIBOR will cease immediately following the LIBOR publication on December 31, 2021.

The ARRC, a group of stakeholders affected by the cessation of the publication of USD LIBOR, was convened to identify an alternative rate and to facilitate voluntary adoption of that alternative rate. The ARRC recommended SOFR as a potential replacement for USD LIBOR. Essentially all financial products and contracts that currently contain conditions or legal provisions that rely on LIBOR and other IBORs are expected to transition to SOFR or similar alternatives in the next few years. This transition will involve changes in debt, derivatives, and other financial contracts to adopt SOFR or other alternative reference rates. The ARRC has estimated that the total exposure to USD LIBOR was close to \$200 trillion in 2016, of which approximately 95 percent were in over-the-counter derivatives. ARRC further notes that USD LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, and similar financial products. In the absence of further tax guidance, the vast majority of expected changes in such contracts could lead to the recognition of gains (or losses) in these contracts for U.S. income tax purposes and to correspondingly potentially large tax liabilities for their holders. To address this issue, the final regulations provide that changes in debt instruments, derivative contracts, and other affected contracts to replace reference rates based on discontinued IBORs in a covered modification (both as defined in the final regulations) will not result in tax realization events under section

1001 and relevant regulations thereunder. For this purpose, a covered modification is generally the replacement of a discontinued IBOR with a qualified rate, provided that the replacement is not excluded under §1.1001-6(j)(1) through (5) of these final regulations (the excluded modifications). The excluded modifications ensure that a covered modification includes only modifications to the cash flows of an IBOR-referencing contract intended to address the replacement of the IBOR-based rate in the contract and that modifications of contracts in a manner that is intended to change the amount or timing of contractual cash flows for other reasons or purposes remain subject to the general rules in section 1001 and the regulations thereunder. The final regulations also provide corresponding guidance on hedging transactions and derivatives to the effect that taxpayers may modify the components of hedged or integrated transactions to replace discontinued IBORs in a covered modification without affecting the tax treatment of the hedges or underlying transactions.

In the absence of these final regulations, parties to contracts affected by the cessation of the publication of LIBOR would either suffer tax consequences to the extent that a change to the contract results in a tax realization event under section 1001 or attempt to find alternative contracts that avoid such a tax realization event, which may be difficult as a commercial matter. Both such options would be both costly and highly disruptive to U.S. financial markets. A large number of contracts may end up being breached, which may lead to bankruptcies or other legal proceedings. The types of actions that contract holders might take in the absence of these final regulations are difficult to predict because such an event is outside recent experience in U.S. financial markets. This financial disruption would be particularly unproductive because the economic characteristics of the financial products and contracts under the new rates

would be essentially unchanged. Thus, there is no underlying economic rationale for a tax realization event.

The Treasury Department and the IRS project that these final regulations would avoid this costly and unproductive disruption. The Treasury Department and the IRS further project that these final regulations, by implementing the regulatory provisions requested by ARRC and taxpayers, will help facilitate the economy's adaptation to the cessation of LIBOR in a least-cost manner.

II. Regulatory Flexibility Act

It is hereby certified that the Final Regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

As discussed elsewhere in this preamble, the administrator of all currency and tenor variants of LIBOR has announced that publication of overnight, one-month, three-month, six-month, and 12-month USD LIBOR will cease on June 30, 2023, and that publication of all other currency and tenor variants of LIBOR will cease on December 31, 2021. Many contracts, including financial contracts such as debt instruments and derivative contracts, refer to LIBOR or another IBOR to determine the parties' rights and obligations under the contract. When parties to IBOR-referencing contracts modify those contracts in anticipation of the discontinuation of the referenced IBOR, that modification can be a tax realization event, giving rise to gain, loss, income, or deduction. That modification can also cause other unintended tax consequences.

The number of small entities potentially affected by the Final Regulations is unknown but could be substantial because entities of all sizes are parties to contracts that reference a discontinued IBOR. Although a substantial number of small entities is potentially affected by the Final Regulations, the Treasury Department and the IRS have concluded that the Final Regulations will not have a significant economic impact

on a substantial number of small entities. This is because the purpose and effect of the Final Regulations is to minimize the economic impact of the transition away from LIBOR and other discontinued IBORs by preventing many of the tax consequences that might otherwise flow when taxpayers modify IBOR-referencing contracts in anticipation of the cessation of a discontinued IBOR. Furthermore, the Final Regulations do not impose a collection of information on any taxpayers, including small entities. Accordingly, the Final Regulations will not have a significant economic impact on a substantial number of small entities.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. The Final Regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The Final Regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

V. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.) (“CRA”). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the Federal Register. Accordingly, the Treasury Department and IRS are adopting the Final Regulations with the delayed effective date generally prescribed under the Congressional Review Act.

Drafting Information

The principal authors of these final regulations are Caitlin Holzem and Spence Hanemann of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

Availability of IRS Documents

The revenue procedure cited in this preamble is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for §1.860G-1 and adding an entry in numerical order for §1.1001-6 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.860G-1 also issued under 26 U.S.C. 860G(a)(1)(B), (d)(2)(E), and (e).

* * * * *

Section 1.1001-6 also issued under 26 U.S.C. 148(i), 26 U.S.C. 988(d), 26 U.S.C. 1275(d), and 26 U.S.C. 7701(l).

* * * * *

Par. 2. Section 1.860A-0 is amended by adding entries for §1.860A-1(b)(6) and (7) and §1.860G-1(e) to read as follows:

§1.860A-0 Outline of REMIC provisions.

* * * * *

§1.860A-1 Effective dates and transition rules.

* * * * *

(b) * * *

(6) Exceptions for certain modified obligations.

(7) Exceptions for certain modifications of obligations that refer to certain interbank offered rates.

* * * * *

§1.860G-1 Definition of regular and residual interests.

* * * * *

(e) Transition from certain interbank offered rates.

(1) In general.

(2) Change in reference rate for a regular interest after the startup day.

(3) Contingencies of rate on a regular interest.

(4) Reasonable expenses incurred to make covered modifications.

* * * * *

Par. 3. Section 1.860A-1 is amended by adding paragraph (b)(7) to read as follows:

§1.860A-1 Effective dates and transition rules.

* * * * *

(b) * * *

(7) *Exceptions for certain modifications of obligations that refer to certain interbank offered rates*--(i) Paragraphs (e)(2) and (4) of §1.860G-1 apply with respect to a covered modification that occurs on or after **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. However, paragraphs (e)(2) and (4) of §1.860G-1 may be applied with respect to a covered modification that occurs before **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. See section 7805(b)(7).

(ii) Paragraph (e)(3) of §1.860G-1 applies to a regular interest in a REMIC issued on or after **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. However, paragraph (e)(3) of §1.860G-1 may be applied to a regular interest in a REMIC issued before **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. See section 7805(b)(7).

Par. 4. Section 1.860G-1 is amended by:

1. Removing “paragraph (b)(3)” in paragraph (a)(5) and adding in its place “paragraphs (b)(3) and (e)(4)”.

2. Adding paragraph (e).

The addition reads as follows:

§1.860G-1 Definition of regular and residual interests.

* * * * *

(e) *Transition from certain interbank offered rates*--(1) *In general.* This paragraph (e) provides rules relating to the modification of the terms of a regular interest in a REMIC or the terms of an asset held by a REMIC as part of the transition away from the London Interbank Offered Rate and certain other interbank offered rates. For purposes

of this paragraph (e), *covered modification* and *discontinued IBOR* have the meanings provided in §1.1001-6(h)(1) and (4), respectively. See §1.1001-6 for additional rules that may apply to an interest in a REMIC that provides for a rate referencing a discontinued IBOR.

(2) *Change in reference rate for a regular interest after the startup day.* A covered modification of a regular interest in a REMIC that occurs after the startup day is disregarded in determining whether the modified regular interest has fixed terms on the startup day under paragraph (a)(4) of this section.

(3) *Contingencies of rate on a regular interest.* An interest in a REMIC does not fail to qualify as a regular interest solely because it is subject to a contingency whereby a rate that references a discontinued IBOR and is a variable rate permitted under paragraph (a)(3) of this section may change to a fixed rate or a different variable rate permitted under paragraph (a)(3) of this section in anticipation of the discontinued IBOR becoming unavailable or unreliable.

(4) *Reasonable expenses incurred to make covered modifications.* An interest in a REMIC does not fail to qualify as a regular interest solely because it is subject to a contingency whereby the amount of payments of principal or interest (or other similar amounts) with respect to the interest in the REMIC is reduced by reasonable costs incurred to effect a covered modification. In addition, payment by a party other than the REMIC of reasonable costs incurred to effect a covered modification is not a contribution to the REMIC for purposes of section 860G(d).

Par. 5. Section 1.1001-6 is added to read as follows:

§1.1001-6 Transition from certain interbank offered rates.

(a) *In general.* This section provides rules relating to the modification of the terms of a contract as part of the transition away from the London Interbank Offered Rate and certain other interbank offered rates. In general, paragraphs (b) through (g) of

this section provide the operative rules for a covered modification. Paragraph (h) of this section defines certain terms that are used in these operative rules, such as *covered modification*, *qualified rate*, *discontinued IBOR*, *associated modification*, and *qualified one-time payment*. Paragraph (j) of this section describes certain modifications that are not covered modifications and provides examples that illustrate the operation of the rules in paragraph (j) of this section. For rules regarding original issue discount on certain debt instruments that provide for a rate referencing a discontinued IBOR, see §1.1275-2(m). For rules regarding certain interests in a REMIC that provide for a rate referencing a discontinued IBOR, see §1.860G-1(e).

(b) *Treatment under section 1001--(1) Covered modifications.* A covered modification of a contract is not treated as the exchange of property for other property differing materially in kind or in extent for purposes of §1.1001-1(a). For example, if the terms of a debt instrument that pays interest at a rate referencing the U.S.-dollar London Interbank Offered Rate (USD LIBOR) are modified to provide that the debt instrument pays interest at a qualified rate referencing the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (SOFR) and the modification is not described in paragraph (j) of this section, the modification is not treated as the exchange of property for other property differing materially in kind or in extent for purposes of §1.1001-1(a).

(2) *Contemporaneous noncovered modifications.* If a covered modification is made at the same time as a noncovered modification, §1.1001-1(a) or §1.1001-3, as appropriate, applies to determine whether the noncovered modification results in the exchange of property for other property differing materially in kind or in extent. In applying §1.1001-1(a) or §1.1001-3 for this purpose, the covered modification is treated as part of the terms of the contract prior to the noncovered modification. For example, if the parties to a debt instrument modify the interest rate in a manner that is a covered

modification and contemporaneously extend the final maturity date of the debt instrument, which is a noncovered modification, only the extension of the final maturity date is analyzed under §1.1001-3 and, for purposes of that analysis, the modified interest rate is treated as a term of the instrument prior to the extension of the final maturity date.

(c) Effect of a covered modification on integrated transactions and hedging transactions--(1) In general. Except as otherwise provided in paragraph (c)(2) of this section, the rules in paragraphs (c)(1)(i) through (iv) of this section determine the effect of a covered modification on an integrated transaction under §1.1275-6, a qualified hedging transaction under §1.988-5(a), a hedging transaction under §1.446-4, or a qualified hedging transaction under §1.148-4(h).

(i) A covered modification of one or more contracts that are part of an integrated transaction under §1.1275-6 is treated as not logging out of the integrated transaction, provided that, no later than the end of the 90-day period beginning on the date of the first covered modification of any such contract, the financial instrument that results from any such covered modifications satisfies the requirements to be a §1.1275-6 hedge (as defined in §1.1275-6(b)(2)) with respect to the qualifying debt instrument that results from any such covered modification. If a taxpayer enters into a financial instrument intended to mitigate the economic effect of a temporary mismatch of the legs of the integrated transaction during that 90-day period (a *§1.1275-6 interim hedge*), the integration of the §1.1275-6 interim hedge with the other components of the integrated transaction during the 90-day period is treated as not logging into a new integrated transaction and the termination of the §1.1275-6 interim hedge before the end of the 90-day period is treated as not logging out of the existing integrated transaction.

(ii) A covered modification of one or more contracts that are part of a qualified hedging transaction under §1.988-5(a) is treated as not logging out of the qualified

hedging transaction, provided that, no later than the end of the 90-day period beginning on the date of the first covered modification of any such contract, the financial instrument or series or combination of financial instruments that results from any such covered modifications satisfies the requirements to be a §1.988-5(a) hedge (as defined in §1.988-5(a)(4)) with respect to the qualifying debt instrument that results from any such covered modification. If a taxpayer enters into a financial instrument intended to mitigate the economic effect of a temporary mismatch of the legs of the qualified hedging transaction during that 90-day period (a §1.988-5(a) *interim hedge*), the integration of the §1.988-5(a) interim hedge with the other components of the qualified hedging transaction during the 90-day period is treated as not legging into a new qualified hedging transaction and the termination of the §1.988-5(a) interim hedge before the end of the 90-day period is treated as not legging out of the existing qualified hedging transaction.

(iii) A covered modification of one leg of a transaction subject to the hedge accounting rules in §1.446-4 is not treated as a disposition or termination (within the meaning of §1.446-4(e)(6)) of either leg of the transaction.

(iv) A covered modification of a qualified hedge or of the tax-advantaged bonds with which the qualified hedge is integrated under §1.148-4(h)(1) is treated as not terminating the qualified hedge under §1.148-4(h)(3)(iv)(B), provided that, no later than the end of the 90-day period beginning on the date of the first covered modification of either the qualified hedge or the hedged bonds, the qualified hedge that results from any such covered modification satisfies the requirements to be a qualified hedge (determined by applying the special rules for certain modifications of qualified hedges under §1.148-4(h)(3)(iv)(C)) with respect to the hedged bonds that result from any such covered modification. Solely for purposes of determining whether the qualified hedge that results from a covered modification satisfies the requirements to be a qualified

hedge with respect to the hedged bonds that result from any such covered modification in the preceding sentence, a qualified one-time payment with respect to the hedge or the hedged bonds (or both) is allocated in a manner consistent with the allocation of a termination payment for a variable yield issue under §1.148-4(h)(3)(iv)(H) and treated as a series of periodic payments. This paragraph (c)(1)(iv) does not apply if, prior to any covered modifications, the qualified hedge and the tax-advantaged bond are integrated under §1.148-4(h)(4).

(2) *Fallback rates.* If a covered modification of a contract that is part of an integrated transaction under §1.1275-6 is described in paragraph (h)(1)(ii) or (iii) of this section, that covered modification is treated as not logging out of the integrated transaction. If a covered modification of a contract that is part of a qualified hedging transaction under §1.988-5(a) is described in paragraph (h)(1)(ii) or (iii) of this section, that covered modification is treated as not logging out of the qualified hedging transaction. If a covered modification of a qualified hedge or of the tax-advantaged bonds with which the qualified hedge is integrated under §1.148-4(h) is described in paragraph (h)(1)(ii) or (iii) of this section, that covered modification is treated as not terminating the qualified hedge under §1.148-4(h)(3)(iv)(B).

(d) *Coordination with provision for existing obligations under chapter 4.* A modification of a contract is not a material modification of that contract for purposes of §1.1471-2(b)(2)(iv) to the extent the modification is a covered modification. See paragraph (b)(2) of this section for rules that apply for purposes of §1.1471-2(b)(2)(iv) when a modification to a contract includes both a covered modification and a contemporaneous noncovered modification.

(e) *Coordination with fast-pay stock rules.* A covered modification of stock is not a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances for purposes of §1.7701(l)-

3(b)(2)(ii). If a covered modification is made at the same time as, or as part of a plan that includes, a noncovered modification and the noncovered modification is a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances, then §1.7701(l)-3(b)(2)(ii) applies to determine whether the stock is fast-pay stock, taking into account all the facts and circumstances (including both the covered and noncovered modification).

(f) *Coordination with rules for investment trusts.* A covered modification of a contract held by an investment trust does not manifest a power to vary the investment of the certificate holders for purposes of §301.7701-4(c)(1) of this chapter. Further, a covered modification of an ownership interest in an investment trust does not manifest a power to vary the investment of the certificate holder for purposes of §301.7701-4(c)(1) of this chapter.

(g) [Reserved]

(h) *Definitions--(1) Covered modification.* A covered modification is a modification or portion of a modification of the terms of a contract that is described in one or more of paragraphs (h)(1)(i) through (iii) of this section and that is not described in any of paragraphs (j)(1) through (5) of this section. Any modification of the terms of a contract described in section 4.02 of Rev. Proc. 2020-44, 2020-45 I.R.B. 991, or described in other guidance published in the Internal Revenue Bulletin that supplements the list of modifications described in section 4.02 of Rev. Proc. 2020-44 or the definitions on which that section relies (see §601.601(d)(2)(ii)(a) of this chapter) is treated as a covered modification. For purposes of this section, a modification of the terms of a contract includes any modification of the terms of the contract, regardless of the form of the modification (for example, a modification may be an exchange of one contract for another, an amendment to the existing contract, or a modification accomplished indirectly through one or more transactions with third parties) and

regardless of whether the modification is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. For purposes of this section, a contract includes but is not limited to a debt instrument, a derivative contract, stock, an insurance contract, and a lease agreement.

(i) The terms of the contract are modified to replace an operative rate that references a discontinued IBOR with a qualified rate, to add an obligation for one party to make a qualified one-time payment (if any), and to make associated modifications (if any).

(ii) The terms of the contract are modified to include a qualified rate as a fallback to an operative rate that references a discontinued IBOR and to make associated modifications (if any).

(iii) The terms of the contract are modified to replace a fallback rate that references a discontinued IBOR with a qualified rate and to make associated modifications (if any).

(2) *Noncovered modification.* A *noncovered modification* is any modification or portion of a modification of the terms of a contract that is not a covered modification.

(3) *Qualified rate*--(i) *In general.* A *qualified rate* is any of the rates described in paragraph (h)(3)(ii) of this section, provided that the interest rate benchmark to which the rate refers and the discontinued IBOR identified in paragraph (h)(1)(i), (ii), or (iii) of this section are based on transactions conducted in the same currency or are otherwise reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds in the same currency. For purposes of paragraphs (h)(1)(ii) and (iii) of this section, a single qualified rate may be comprised of one or more fallback rates (for example, a waterfall of fallback rates). Paragraph (h)(3)(iii) of this section provides additional rules for determining whether one or more fallback rates constitute a qualified

rate, and paragraph (h)(3)(iv) of this section provides examples illustrating the operation of those rules.

(ii) *Rates.* The following rates are described in this paragraph (h)(3)(ii):

(A) A qualified floating rate, as defined in §1.1275-5(b), but without regard to the limitations on multiples set forth in §1.1275-5(b) (examples of qualified floating rates generally include SOFR, the Sterling Overnight Index Average, the Tokyo Overnight Average Rate, the Swiss Average Rate Overnight, and the euro short-term rate administered by the European Central Bank);

(B) An alternative, substitute, or successor rate selected, endorsed, or recommended by the central bank, reserve bank, monetary authority, or similar institution (including any committee or working group thereof) as a replacement for a discontinued IBOR or its local currency equivalent in that jurisdiction;

(C) A rate selected, endorsed, or recommended by the Alternative Reference Rates Committee as a replacement for USD LIBOR, provided that the Federal Reserve Bank of New York is an ex officio member of the Alternative Reference Rates Committee at the time of the selection, endorsement, or recommendation;

(D) A rate that is determined by reference to a rate described in paragraph (h)(3)(ii)(A), (B), or (C) of this section, including a rate determined by adding or subtracting a specified number of basis points to or from the rate or by multiplying the rate by a specified number; and

(E) A rate identified for purposes of this section as a qualified rate in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter).

(iii) *Rules for fallback rates--(A) Multiple fallback rates.* If the rate being tested as a qualified rate is comprised of more than one fallback rate, the rate is a qualified rate only if each individual fallback rate separately satisfies the requirements to be a qualified rate.

(B) *Indeterminable fallback rate.* Except as provided in paragraph (h)(3)(iii)(C) of this section, if it is not possible to determine at the time of the modification being tested as a covered modification whether a fallback rate satisfies the requirements set forth in the first sentence of paragraph (h)(3)(i) of this section (for example, the calculation agent will determine the fallback rate at the time that the fallback rate is triggered based on factors that are not guaranteed to produce a rate described in paragraph (h)(3)(ii) of this section), the fallback rate is treated as not satisfying the requirements to be a qualified rate.

(C) *Fallback rate is a remote contingency.* If the likelihood that any value will ever be determined under the contract by reference to a fallback rate is remote (determined at the time of the modification being tested as a covered modification), that fallback rate is treated as satisfying the requirements to be a qualified rate.

(iv) *Examples.* The following examples illustrate the application of the rules in paragraphs (h)(3)(i) through (iii) of this section to qualified rates comprised of one or more fallback rates.

(A) *Example 1: Addition of a single fallback rate--(1) Facts.* B is the issuer and L is the holder of a debt instrument that pays interest semiannually in U.S. dollars at a rate of six-month USD LIBOR and that contains no fallback provisions to address the pending discontinuation of six-month USD LIBOR. On July 1, 2022, B and L modify the debt instrument to add such fallback provisions (the *new fallbacks*). The new fallbacks provide that, upon the discontinuation of six-month USD LIBOR, six-month USD LIBOR will be replaced by a fallback rate equal to CME Group's forward-looking SOFR term rate of a six-month tenor (*six-month CME Term SOFR*) plus a fixed spread that will be determined at the time of six-month USD LIBOR's discontinuation. Six-month USD LIBOR will be discontinued on June 30, 2023.

(2) *Analysis.* The fallback rate is a qualified floating rate and is, therefore, described in paragraph (h)(3)(ii)(A) of this section. Moreover, because both six-month USD LIBOR and six-month CME Term SOFR are based on transactions conducted in U.S. dollars, the fallback rate satisfies the currency requirement in paragraph (h)(3)(i) of this section. As further provided in paragraph (h)(3)(i) of this section, B and L must also apply the rules in paragraph (h)(3)(iii)(A), (B), and (C) of this section to determine if the fallback rate is a qualified rate. Because the rate being tested as a qualified rate (*i.e.*, the fallback rate) is comprised of only one fallback rate, paragraph (h)(3)(iii)(A) of this section has no effect. As discussed elsewhere in this paragraph (h)(3)(iv)(A)(2), it is evident at the time of the fallback rate's addition that the fallback rate satisfies the requirements set forth in the first sentence of paragraph (h)(3)(i) of this section, so paragraph (h)(3)(iii)(B) of this section has no effect. Because it appears likely at the time of the modification that the fallback rate will be used to determine interest on the debt instrument, paragraph (h)(3)(iii)(C) of this section has no effect. In summary, the fallback rate is described in paragraph (h)(3)(ii)(A) of this section and satisfies the currency requirement in paragraph (h)(3)(i) of this section, and none of the rules in paragraph (h)(3)(iii) of this section affect the analysis. Therefore, the fallback rate is a qualified rate.

(B) *Example 2: Addition of a single indeterminable fallback rate--(1) Facts.* The facts are the same as in paragraph (h)(3)(iv)(A)(1) of this section (*Example 1*), except that the new fallbacks provide that, upon the discontinuation of six-month USD LIBOR, B will select a replacement for six-month USD LIBOR based on the industry standard at the time of selection.

(2) *Analysis.* As provided in paragraph (h)(3)(i) of this section, B and L must apply the rule in paragraph (h)(3)(iii)(B) of this section to determine whether the fallback rate is a qualified rate. Because it is not possible to determine at the time of the fallback

rate's addition in 2022 whether the fallback rate (*i.e.*, the replacement rate that B will select in 2023) satisfies the requirements set forth in the first sentence of paragraph (h)(3)(i) of this section, the fallback rate is treated as not satisfying the requirements to be a qualified rate under paragraph (h)(3)(iii)(B) of this section. Therefore, the fallback rate is not a qualified rate.

(C) Example 3: Addition of a fallback waterfall that is a qualified rate--(1) Facts.

The facts are the same as in paragraph (h)(3)(iv)(A)(1) of this section (*Example 1*), except that the new fallbacks provide for a fallback waterfall. The first tier of the fallback waterfall provides that, upon the discontinuation of six-month USD LIBOR, six-month USD LIBOR will be replaced by a fallback rate equal to six-month CME Term SOFR plus a fixed spread that will be determined at the time of six-month USD LIBOR's discontinuation. The second tier of the fallback waterfall provides that, upon the discontinuation of six-month CME Term SOFR, B will select a replacement for the fallback rate in the first tier of the fallback waterfall based on the industry standard at the time of selection. At the time of the fallback waterfall's addition, the likelihood that six-month CME Term SOFR will be discontinued is remote.

(2) Analysis of the fallback waterfall. As provided in paragraph (h)(3)(i) of this section, B and L must apply the rules in paragraphs (h)(3)(iii)(A), (B) and (C) of this section to determine whether the fallback waterfall is a qualified rate. Under paragraph (h)(3)(iii)(A) of this section, because the rate being tested as a qualified rate (*i.e.*, the fallback waterfall) is comprised of more than one fallback rate, the fallback waterfall is a qualified rate only if each individual fallback rate (*i.e.*, fallback rates in the first and second tiers of the fallback waterfall) separately satisfies the requirements to be a qualified rate. As concluded in paragraphs (h)(3)(iv)(C)(3) and (4) of this section, the fallback rates in the first and second tiers of the fallback waterfall separately satisfy the requirements to be a qualified rate. Therefore, the fallback waterfall is a qualified rate.

(3) *Analysis of the first tier of the fallback waterfall.* Because the fallback rate in the first tier of the fallback waterfall is the same as the fallback rate in paragraph (h)(3)(iv)(A)(1) of this section (*Example 1*), the analysis of the fallback rate in the first tier of the fallback waterfall is the same as the analysis of the fallback rate in paragraph (h)(3)(iv)(A)(2) of this section (*Example 1*). Accordingly, the fallback rate in the first tier of the fallback waterfall separately satisfies the requirements to be a qualified rate.

(4) *Analysis of the second tier of the fallback waterfall.* The fallback rate in the second tier of the fallback waterfall is the same as the fallback rate in paragraph (h)(3)(iv)(B)(1) of this section (*Example 2*). However, unlike the fallback rate in paragraph (h)(3)(iv)(B)(1) of this section (*Example 2*), the likelihood that the amount of interest on the debt instrument will ever be determined by reference to the fallback rate in the second tier of the fallback waterfall is remote. Accordingly, under paragraph (h)(3)(iii)(C) of this section, the fallback rate in the second tier of the fallback waterfall is treated as satisfying the requirements to be a qualified rate.

(D) *Example 4: Addition of a fallback waterfall that is not a qualified rate--(1)*

Facts. The facts are the same as in paragraph (h)(3)(iv)(A)(1) of this section (*Example 1*), except that the new fallbacks provide for a fallback waterfall. The first tier of the fallback waterfall provides that, upon the discontinuation of six-month USD LIBOR, six-month USD LIBOR will be replaced by a stated fallback rate (*Fallback Rate X*). Fallback Rate X, which is equal to an interest rate benchmark (*Benchmark X*) plus a fixed spread, satisfies the requirements set forth in the first sentence of paragraph (h)(3)(i) of this section. The second tier of the fallback waterfall provides that, upon the discontinuation of Benchmark X, B will select a replacement for Fallback Rate X based on the industry standard at the time of selection. At the time of the fallback waterfall's addition, the likelihood that Benchmark X will be discontinued is not remote.

(2) Analysis of the fallback waterfall. As provided in paragraph (h)(3)(i) of this section, B and L must apply the rules in paragraphs (h)(3)(iii)(A), (B) and (C) of this section to determine whether the fallback waterfall is a qualified rate. Under paragraph (h)(3)(iii)(A) of this section, because the rate being tested as a qualified rate (*i.e.*, the fallback waterfall) is comprised of more than one fallback rate, the fallback waterfall is a qualified rate only if each individual fallback rate (*i.e.*, the fallback rates in the first and second tiers of the fallback waterfall) separately satisfies the requirements to be a qualified rate. As concluded in paragraph (h)(3)(iv)(D)(3) of this section, the fallback rate in the second tier of the fallback waterfall is treated as not satisfying the requirements to be a qualified rate. Therefore, the fallback waterfall is not a qualified rate.

(3) Analysis of the second tier of the fallback waterfall. As provided in paragraphs (h)(3)(i) and (h)(3)(iii)(A) of this section, B and L must apply the rules in paragraphs (h)(3)(iii)(B) and (C) of this section to determine whether the fallback rate in the second tier of the fallback waterfall is a qualified rate. Because the likelihood that Benchmark X will be discontinued is not remote, paragraph (h)(3)(iii)(C) of this section has no effect on the analysis of the fallback rate in the second tier of the fallback waterfall. Under paragraph (h)(3)(iii)(B) of this section, because it is not possible to determine at the time of the fallback waterfall's addition in 2022 whether the fallback rate in the second tier of the fallback waterfall (*i.e.*, the replacement rate that B will select in 2023) satisfies the requirements set forth in the first sentence of paragraph (h)(3)(i) of this section, the fallback rate in the second tier of the fallback waterfall is treated as not satisfying the requirements to be a qualified rate.

(4) Discontinued IBOR. A *discontinued IBOR* is any interbank offered rate described in paragraph (h)(4)(i) or (ii) of this section but only during the period beginning on the date of the announcement described in paragraph (h)(4)(i) or (ii) of this section

and ending on the date that is one year after the date on which the administrator of the interbank offered rate ceases to provide the interbank offered rate.

(i) The administrator of the interbank offered rate announces that the administrator has ceased or will cease to provide the interbank offered rate permanently or indefinitely, and no successor administrator is expected as of the time of the announcement to continue to provide the interbank offered rate; or

(ii) The regulatory supervisor for the administrator of the interbank offered rate, the central bank for the currency of the interbank offered rate, an insolvency official with jurisdiction over the administrator for the interbank offered rate, a resolution authority with jurisdiction over the administrator for the interbank offered rate, a court, or an entity with similar insolvency or resolution authority over the administrator for the interbank offered rate announces that the administrator of the interbank offered rate has ceased or will cease to provide the interbank offered rate permanently or indefinitely, and no successor administrator is expected as of the time of the announcement to continue to provide the interbank offered rate.

(5) *Associated modification.* An *associated modification* is a modification of the technical, administrative, or operational terms of a contract that is reasonably necessary to adopt or to implement the modifications described in paragraph (h)(1)(i), (ii), or (iii) of this section other than associated modifications. An associated modification also includes an incidental cash payment intended to compensate a counterparty for small valuation differences resulting from a modification of the administrative terms of a contract, such as the valuation differences resulting from a change in observation period. Examples of associated modifications include a change to the definition of interest period or a change to the timing and frequency of determining rates and making payments of interest (for example, delaying payment dates on a debt instrument by two

days to allow sufficient time to compute and pay interest at a qualified rate computed in arrears).

(6) *Qualified one-time payment.* A *qualified one-time payment* is a single cash payment that is intended to compensate the other party or parties for all or part of the basis difference between the discontinued IBOR identified in paragraph (h)(1)(i), (ii), or (iii) of this section and the interest rate benchmark to which the qualified rate refers.

(i) [Reserved]

(j) *Modifications excluded from the definition of covered modification.* A modification or portion of a modification described in any of paragraphs (j)(1) through (5) of this section is excluded from the definition of covered modification in paragraph (h)(1) of this section and therefore is a noncovered modification.

(1) The terms of the contract are modified to change the amount or timing of contractual cash flows and that change is intended to induce one or more parties to perform any act necessary to consent to a modification to the contract described in paragraph (h)(1)(i), (ii), or (iii) of this section. See paragraph (j)(6)(iii) of this section (*Example 3*).

(2) The terms of the contract are modified to change the amount or timing of contractual cash flows and that change is intended to compensate one or more parties for a modification to the contract not described in paragraph (h)(1)(i), (ii), or (iii) of this section. See paragraph (j)(6)(v) of this section (*Example 5*).

(3) The terms of the contract are modified to change the amount or timing of contractual cash flows and that change is either a concession granted to a party to the contract because that party is experiencing financial difficulty or a concession secured by a party to the contract to account for the credit deterioration of another party to the contract. See paragraph (j)(6)(vi) of this section (*Example 6*).

(4) The terms of the contract are modified to change the amount or timing of contractual cash flows and that change is intended to compensate one or more parties for a change in rights or obligations that are not derived from the contract being modified. See paragraph (j)(6)(vii) of this section (*Example 7*). If each contract in a given portfolio of contracts has the same parties, those parties modify more than one contract in the portfolio (each such contract is a *modified portfolio contract*), and those modifications provide for a single, aggregate qualified one-time payment with respect to all modified portfolio contracts, then the portion of the qualified one-time payment allocable to any one modified portfolio contract is treated for purposes of this paragraph (j)(4) as not intended to compensate for a change in rights or obligations derived from any other modified portfolio contract.

(5) The terms of the contract are modified to change the amount or timing of contractual cash flows and the modification is identified for purposes of this paragraph (j)(5) in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter) as having a principal purpose of achieving a result that is unreasonable in light of the purpose of this section.

(6) *Examples.* The following examples illustrate the operation of the rules in paragraphs (j)(1) through (4) of this section.

(i) *Example 1: Covered modification--(A) Facts.* B is the issuer and L is the holder of a debt instrument that pays interest semiannually at a rate of six-month USD LIBOR plus 100 basis points. On July 1, 2022, B and L modify the debt instrument to replace that original rate with CME Group's forward-looking SOFR term rate of a six-month tenor (*six-month CME Term SOFR*) plus an adjustment spread of 42.826 basis points plus 100 basis points (the whole modification is the *LIBOR replacement modification with basis adjustment spread*). B and L chose the adjustment spread of 42.826 basis points because that is the adjustment spread used or recommended by

the International Swaps and Derivatives Association and the Alternative Reference Rates Committee for similar substitutions or replacements of six-month USD LIBOR with a tenor-adjusted variant of SOFR.

(B) *Analysis.* The parties have modified the terms of the debt instrument to replace a rate referencing a discontinued IBOR (*i.e.*, six-month USD LIBOR plus 100 basis points) with a qualified rate (*i.e.*, six-month CME Term SOFR plus 142.826 basis points). The LIBOR replacement modification with basis adjustment spread is described in paragraph (h)(1)(i) of this section and not described in any of paragraphs (j)(1) through (5) of this section. Therefore, the LIBOR replacement modification with basis adjustment spread is a covered modification of the debt instrument.

(ii) *Example 2: Covered modification with qualified one-time payment--(A) Facts.* The facts are the same as in paragraph (j)(6)(i)(A) of this section (*Example 1*), except that, instead of the LIBOR replacement modification with basis adjustment spread, B and L modify the debt instrument by replacing the original rate of six-month USD LIBOR plus 100 basis points with six-month CME Term SOFR plus 100 basis points and by obligating B to make a cash payment to L equal to the present value of the adjustment spread of 42.826 basis points with respect to the debt instrument (this payment is the *basis adjustment payment*, and the whole modification is the *LIBOR replacement modification with basis adjustment payment*).

(B) *Analysis.* The parties have modified the terms of the debt instrument to replace a rate referencing a discontinued IBOR (*i.e.*, six-month USD LIBOR plus 100 basis points) with a qualified rate (*i.e.*, six-month CME Term SOFR plus 100 basis points) and have added an obligation for B to make the basis adjustment payment, which is a single cash payment that is intended to compensate L for the basis difference between the discontinued IBOR identified in paragraph (h)(1)(i) of this section (*i.e.*, six-month USD LIBOR) and the interest rate benchmark to which the qualified rate refers

(i.e., six-month CME Term SOFR). Accordingly, the basis adjustment payment is a qualified one-time payment as defined in paragraph (h)(6) of this section, and the LIBOR replacement modification with basis adjustment payment is described in paragraph (h)(1)(i) of this section. Because it is described in paragraph (h)(1)(i) of this section and not described in any of paragraphs (j)(1) through (5) of this section, the LIBOR replacement modification with basis adjustment payment is a covered modification of the debt instrument.

(iii) *Example 3: Inducement spread--(A) Facts.* The facts are the same as in paragraph (j)(6)(i)(A) of this section (*Example 1*), except that the debt instrument is part of a widely held issue of debt with identical terms. Under the trust indenture applicable to the debt instrument, if B proposes a modification of the terms of the debt and all holders of the debt consent to that modification, the terms of the debt are modified as B proposed. In accordance with the trust indenture, B proposes the LIBOR replacement modification with basis adjustment spread on January 1, 2022. To induce holders such as L to perform the acts necessary to consent to the LIBOR replacement modification with basis adjustment spread, B also proposes to increase the interest rate paid to each consenting holder by an additional spread of 10 basis points (the *inducement spread*). All holders, including L, consent to B's proposed modifications by June 1, 2022. On July 1, 2022, the debt instrument is modified to implement the LIBOR replacement modification with basis adjustment spread and to increase the interest rate by the inducement spread. Once all modifications are effective, the debt instrument pays interest at a rate of six-month CME Term SOFR plus 152.826 basis points.

(B) *Analysis.* As concluded in paragraph (j)(6)(i)(B) of this section (*Example 1*), the portion of these modifications that implements the LIBOR replacement modification with basis adjustment spread is a covered modification of L's debt instrument. However, the portion of these modifications that increases the interest rate by the

inducement spread changes the amount of cash flows on L's debt instrument, and that change is intended to induce L to perform the acts necessary to consent to a modification to the debt instrument described in paragraph (h)(1)(i) of this section (*i.e.*, the LIBOR replacement modification with basis adjustment spread). Therefore, the portion of the modification that increases the interest rate by the inducement spread is described in paragraph (j)(1) of this section and, consequently, is a noncovered modification of L's debt instrument. See paragraph (b)(2) of this section for the treatment of a contemporaneous noncovered modification.

(iv) *Example 4: Consent fee--(A) Facts.* The facts are the same as in paragraph (j)(6)(iii)(A) of this section (*Example 3*), except that, instead of proposing to increase the interest rate paid to each consenting holder by the inducement spread, B proposes to make a cash payment to each consenting holder (the *consent fee*) at the time of the modification. Thus, when the proposed modification occurs on July 1, 2022, B pays all holders, including L, the consent fee. Once all modifications are effective, the debt instrument pays interest at a rate of six-month CME Term SOFR plus 142.826 basis points.

(B) *Analysis.* As concluded in paragraph (j)(6)(i)(B) of this section (*Example 1*), the LIBOR replacement modification with basis adjustment spread is a covered modification of L's debt instrument. However, B's obligation to pay the consent fee is also a modification of L's debt instrument but is not a covered modification because it is not described in paragraph (h)(1)(i) of this section. In particular, B's obligation to pay the consent fee is not an associated modification because it is not a modification of the technical, administrative, or operational terms of L's debt instrument and is not intended to compensate for valuation differences resulting from a modification of the administrative terms of L's contract. Nor is the consent fee a qualified one-time payment because it is not intended to compensate L for any part of the basis difference

between the discontinued IBOR identified in paragraph (h)(1)(i) of this section (*i.e.*, six-month USD LIBOR) and the interest rate benchmark to which the qualified rate refers (*i.e.*, six-month CME Term SOFR). See paragraph (b)(2) of this section for the treatment of a contemporaneous noncovered modification.

(v) *Example 5: Compensation for a modification to a customary financial covenant--(A) Facts.* The facts are the same as in paragraph (j)(6)(i)(A) of this section (*Example 1*), except that, at the same time as and for reasons unrelated to the LIBOR replacement modification with basis adjustment spread, B and L also modify customary financial covenants in the debt instrument in a manner that benefits B. In exchange for the modification of customary financial covenants, B agrees to add another 30 basis points to the rate such that, once all modifications are effective, the debt instrument pays interest at a rate of six-month CME Term SOFR plus 172.826 basis points.

(B) *Analysis.* As concluded in paragraph (j)(6)(i)(B) of this section (*Example 1*), the portion of these modifications that implements the LIBOR replacement modification with basis adjustment spread is a covered modification of the debt instrument. However, the portion of these modifications that modifies customary financial covenants is not related to the replacement of LIBOR and, therefore, is not described in any of paragraphs (h)(1)(i), (ii), or (iii) of this section and, therefore, is a noncovered modification of the debt instrument. Moreover, the portion of these modifications that adds 30 basis points to the rate changes the amount of cash flows on the debt instrument, and the parties intend that change to compensate L for a modification to the debt instrument not described in paragraph (h)(1)(i), (ii), or (iii) of this section (*i.e.*, the modification of customary financial covenants). Therefore, the portion of these modifications that adds those 30 basis points to the rate is described in paragraph (j)(2) of this section and, consequently, is a noncovered modification of the debt instrument.

See paragraph (b)(2) of this section for the treatment of a contemporaneous noncovered modification.

(vi) *Example 6: Workout of distressed debt--(A) Facts.* The facts are the same as in paragraph (j)(6)(i)(A) of this section (*Example 1*), except that B's financial condition has deteriorated since the issue date of the debt instrument and, to decrease the risk of B's default or bankruptcy, L agrees to subtract 50 basis points from the rate such that, once all modifications are effective, the debt instrument pays interest at a rate of six-month CME Term SOFR plus 92.826 basis points.

(B) *Analysis.* As concluded in paragraph (j)(6)(i)(B) of this section (*Example 1*), the portion of these modifications that implements the LIBOR replacement modification with basis adjustment spread is a covered modification of the debt instrument. However, the portion of these modifications that subtracts 50 basis points from the rate changes the amount of cash flows on the debt instrument, and that change is a concession granted to B because B is experiencing financial difficulty. Therefore, the portion of these modifications that subtracts those 50 basis points from the rate is described in paragraph (j)(3) of this section and, consequently, is a noncovered modification of the debt instrument. See paragraph (b)(2) of this section for the treatment of a contemporaneous noncovered modification.

(vii) *Example 7: Change in rights or obligations not derived from the modified contract--(A) Facts.* B is the issuer and L is the holder of a debt instrument (*Debt X*) with respect to which the facts are the same as in paragraph (j)(6)(i)(A) of this section (*Example 1*). In addition, B and L are the issuer and holder, respectively, of a second debt instrument (*Debt Y*). At the same time that the LIBOR replacement modification with basis adjustment spread occurs with respect to Debt X, B and L also modify customary financial covenants in Debt Y in a manner that benefits B. In exchange for the modification of customary financial covenants in Debt Y, B agrees to add another 30

basis points to the rate on Debt X such that, once all modifications are effective, Debt X pays interest at a rate of six-month CME Term SOFR plus 172.826 basis points.

(B) *Analysis.* As concluded in paragraph (j)(6)(i)(B) of this section (*Example 1*), the portion of these modifications that implements the LIBOR replacement modification with basis adjustment spread is a covered modification of Debt X. However, the portion of these modifications that adds 30 basis points to the rate on Debt X changes the amount of cash flows on Debt X, and the parties intend that change to compensate L for a change in rights or obligations that are not derived from Debt X (*i.e.*, the modification of customary financial covenants in Debt Y). Therefore, the portion of these modifications that adds those 30 basis points to the rate on Debt X is described in paragraph (j)(4) of this section and, consequently, is a noncovered modification of Debt X. See paragraph (b)(2) of this section for the treatment of a contemporaneous noncovered modification.

(k) *Applicability date.* This section applies to a modification of the terms of a contract that occurs on or after **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. A taxpayer may choose to apply this section to modifications of the terms of contracts that occur before **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, provided that the taxpayer and all related parties (within the meaning of section 267(b) or section 707(b)(1) or within the meaning of §1.150-1(b) for a taxpayer that is a State or local governmental unit (as defined in §1.103-1(a)) or a 501(c)(3) organization (as defined in section 150(a)(4))) apply this section to all modifications of the terms of contracts that occur before that date. See section 7805(b)(7).

Par. 6. Section 1.1271-0 is amended by adding entries for §1.1275-2(m) to read as follows:

§1.1271-0 Original issue discount; effective date; table of contents.

* * * * *

§1.1275-2 Special rules relating to debt instruments.

* * * * *

(m) Transition from certain interbank offered rates.

(1) In general.

(2) Single qualified floating rate.

(3) Remote contingency.

(4) Change in circumstances.

(5) Applicability date.

* * * * *

Par. 7. Section 1.1275-2 is amended by adding paragraph (m) to read as follows:

§1.1275-2 Special rules relating to debt instruments.

* * * * *

(m) *Transition from certain interbank offered rates--*(1) *In general.* This paragraph (m) applies to a variable rate debt instrument (as defined in §1.1275-5(a)) that provides both for a qualified floating rate that references a discontinued IBOR and for a methodology to change that rate referencing a discontinued IBOR to a different rate in anticipation of the discontinued IBOR becoming unavailable or unreliable. For purposes of this paragraph (m), *discontinued IBOR* has the meaning provided in §1.1001-6(h)(4). See §1.1001-6 for additional rules that may apply to a debt instrument that provides for a rate referencing a discontinued IBOR.

(2) *Single qualified floating rate.* If a debt instrument is described in paragraph (m)(1) of this section, the rate referencing a discontinued IBOR and the different rate are treated as a single qualified floating rate for purposes of §1.1275-5.

(3) *Remote contingency.* If a debt instrument is described in paragraph (m)(1) of this section, the possibility that the discontinued IBOR will become unavailable or unreliable is treated as a remote contingency for purposes of paragraph (h) of this section.

(4) *Change in circumstances.* If a debt instrument is described in paragraph (m)(1) of this section, the fact that the discontinued IBOR has become unavailable or unreliable is not treated as a change in circumstances for purposes of paragraph (h)(6) of this section.

(5) *Applicability date.* Paragraph (m) of this section applies to debt instruments issued on or after **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. A taxpayer may choose to apply paragraph (m) of this section to debt instruments issued before **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, provided that the taxpayer and all related parties (within the meaning of section 267(b) or section 707(b)(1) or within the meaning of §1.150-1(b) for a taxpayer that is a State or local governmental unit (as defined in §1.103-1(a)) or a 501(c)(3) organization (as defined in section 150(a)(4))) apply paragraph (m) of this section to all debt instruments issued before that date. See section 7805(b)(7).

Par. 8. Section 1.7701(l)-3 is amended by adding a sentence at the end of paragraph (b)(2)(ii) to read as follows:

§1.7701(l)-3 Recharacterizing financing arrangements involving fast-pay stock.

* * * * *

(b) * * *

(2) * * *

(ii) * * * See §1.1001-6(e) for additional rules that may apply to stock that provides for a rate referencing a discontinued IBOR, as defined in §1.1001-6(h)(4).

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PART 301--PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 10. Section 301.7701-4 is amended by adding a sentence at the end of paragraph (c)(1) to read as follows:

§301.7701-4 Trusts.

* * * * *

(c) * * *

(1) * * * See §1.1001-6(f) of this chapter for additional rules that may apply to an investment trust that holds one or more contracts that provide for a rate referencing a discontinued IBOR, as defined in §1.1001-6(h)(4) of this chapter, and for additional rules that may apply to an investment trust with one or more ownership interests that reference a discontinued IBOR.

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Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2021

Lily Batchelder,
Assistant Secretary of the Treasury (Tax Policy).